IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 24TH MAY 2007 / 3RD JYAISHTA 1929

MFA.No. 675 of 2000

OPMV.111/1993 of MOTOR ACCIDENT CLAIMS TRIBUNAL, MANJERI
.....

APPELLANT/PETITIONER:

MANJERIKKATTIL ABDUL MAJEED, S/O. KUNHIMOYIN,
MANJERIKKATTIL HOUSE, KUTHUKAL ROAD, MANJERI

BY ADV. SRI.O.V.MANIPRASAD
SRI.M.P.PRABHANANDAN

RESPONDENTS/RESPONDENTS 3, 4:
---

1. NEELIYATHU MAMMI, S/O. ALI,
NEELIYATHU HOUSE, PONMUNDUAM,
POST VYALATHUR, MALAPPURAM DISTRICT (DRIVER)

2. ORIENTAL INSURACNE COMPANY LIMITED,
THIRUVANANTHAPURAM.

3. K.P. ABDU, S/O. HAMZA, KARIMPANAPARAMBIL HOUSE,
TIRUR.

R2 BY SRI.GEORGE CHERIAN (THIRUVALLA)

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 24/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.F.A.No. 675 of 2000

Dated this the 24th day of May, 2007

Judgment

Koshy, J.

Appellant while driving his jeep bearing registration No. KLM 6315 through Manjeri - Nilambur road, a lorry bearing Registration No.KRZ 2187 driven by the first respondent hit the jeep and he suffered serious injuries. Appellant filed a claim petition for Rs.85,000/-. According to the appellant, the accident occurred due to the rash and negligent driving of the first respondent. The lorry driven by the first respondent was insured by the second respondent insurance company and second respondent is liable to pay compensation. To prove the case, appellant was examined and no counter evidence was filed. However, on going through the scene mahazar, the Tribunal did not accept the oral evidence, but, found that the accident occurred due to the negligence of the appellant himself and, therefore, claim petition was dismissed. The tribunal found that only the appellant was negligent by looking into the scene mahazar which was recorded much after the

time of the accident. We cannot say that appellant alone was negligent. We cannot also ignore the oral evidence completely. It was head-on collision in the highway and considering the FIR and the oral evidence, we are of the opinion that negligence has to be attributed equally between the appellant as well as first respondent, driver of the lorry. We are fortified by the decision in another award in O.P.(MV) No.1221, 1994 and 1995 of 1992 with respect to the same accident wherein the Motor Accidents Claims Tribunal held that both drivers were equally responsible and insurance company did not file appeal. The above finding of negligence was apportioned between the insurance companies. Insurance company did not file any appeal. The above finding was accepted in M.F.A. No.197 of 1999 when one of the claimants (O.P.(MV) No.1221 of 1992) filed appeal claiming more compensation. Appellant cannot claim compensation against his own insurance company as there is contributory negligence on his part, but, he can claim 50% compensation from the Oriental Insurance Company which was a party in O.P. (MV) No.1221 of 1992 and connected cases also. Therefore, out of the total compensation calculated, 50% has to be deposited by the

second respondent Oriental Insurance Company Limited which insured the lorry. In the award, there is no discussion regarding the evidence adduced for calculating the compensation. We are not having any data for calculating the compensation. The tribunal dismissed the application only on the question of negligence and we remand the matter to the tribunal for calculation of quantum of compensation and awarding of compensation payable to the claimant.

The appeal is remanded after finding that there is 50% contributory negligence on the part of the appellant and 50% to the driver of the vehicle insured by the second respondent insurance company. Parties may appear before the tribunal on 30.7.2007.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.F.A. NO.675/2000

JUDGMENT

Dated:24th May, 2007